APPEAL NO. 010850
FILED JUNE 4, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 4, 2001. The hearing officer resolved the sole issue by determining that the respondent (claimant) reached maximum medical improvement on September 3, 2000, with a 15% impairment rating (IR). The appellant (carrier) appealed the hearing officer's IR determination contending that the designated doctor's rating was not calculated in compliance with the protocols of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and is not entitled to presumptive weight. The claimant did not respond.

DECISION

The decision of the hearing officer is affirmed.

The carrier asserts on appeal that the hearing officer erred in finding the IR to be 15% as the designated doctor's, Dr. S, rating was not calculated in compliance with the protocols of the AMA Guides and thus is not entitled to presumptive weight.

The hearing officer did not err in determining that the claimant's IR is 15% as calculated by Dr. S. The peer review doctor, Dr. O, testified that Dr. S improperly calculated the IR based on range of motion from Table 35 of the AMA Guides and that he should have used Table 36 for an IR based on the diagnosis of arthritis. Dr. O also said that Dr. S should have consulted with the fifth edition of the AMA Guides and current literature for a proper calculation of arthritis in the knees. However, Section 408.124(b) provides that the Texas Workers' Compensation Commission (Commission) shall use the "Guides to the Evaluation of Permanent Impairment," *third edition, second printing, dated February 1989*, published by the [AMA], in calculating IR. *(emphasis added).* We find that Dr. S used the correct version of the AMA Guides in calculating the IR. The hearing officer also determined that Dr. S responded adequately to Dr. O's written comments concerning his 15% IR and that it was in accordance with the third edition of the AMA Guides.

The hearing officer did not err in determining that the claimant's IR is 15% as assessed by Dr. S. Section 408.125(e) provides that the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. The hearing officer found that Dr. S's IR determination is not contrary to the great weight of the other medical evidence.

The hearing officer is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. (Section 410.165(a)). It is for the hearing officer, as finder of fact, to resolve the inconsistencies and

conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The Appeals Panel will not disturb a challenged factual finding of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge